



REMARKS

In this application, claims 1-49 are pending. In this Office Action, Examiner Snow made a restriction requirement between two groups of claims, which were characterized as follows:

- I. Claims 1-42 and 48-49, drawn to fusion implant, classified in class 623 17, subclass 11.
- II. Claims 43-47, drawn to a method of treating adjacent bony structures, classified in class 623, subclass 23.61.

The above language is taken verbatim from the Office Action for the sake of clarity, and is not an admission of any sort by Applicants as to the subject matter or classification of any claim.

As the restriction requirement relied on the provisions of 35 U.S.C. § 121, which makes restriction permissive, per the practice noted in MPEP 803 and 808.02 this application should be examined as a whole if it can be done without undue burden on the Examiner. Applicants elect group I (claims 1-42 and 48-49) for prosecution, with traverse on the grounds that searching and examining the entire application can be made without serious burden. Both claim sets include common structural features, such as those of a recited body or implant. A correct search strategy for either claim set will consider such features. In fact, the searching for both sets of claims will likely be identical or at least overlap to a very great extent. Since the searching will overlap and produce references potentially relevant to both sets of claims, there will be no significant extra burden in searching and examining both sets of claims. Per MPEP 803 and 808.02, the restriction requirement should be withdrawn and all pending claims should be examined.

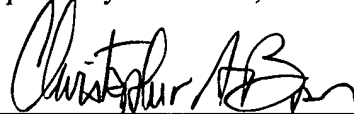
The pending Office Action also indicated that an election of species should be made, but did not identify any species. Accordingly, it is respectfully submitted that a requirement for election has not been properly made, per MPEP 809.02. Further, there are several claims in the

application that are generic to all of the figures in the application, one of which is claim 26. Applicants reserve the right to claim genericness of other specific pending or added claims later as may be appropriate. Examination of the claims with reference to all of the disclosed embodiments would not present extra burden to the examiner, and would promote efficiency. Thus, to the extent the examiner intended to make an election requirement, it is not possible to respond at this time, and based on the existence of generic claims and the lack of extra burden, Applicants respectfully believe that no election requirement should be made.

In responding to this Office Action, Applicants have not amended any claim, and do not intend to limit the scope of pending or later-offered claims. The pending claims are intended to have their full scope, including equivalents, to which their language entitles them. The remarks made herein are not intended to be exhaustive of bases for reconsideration, but simply to effectively and efficiently respond to the pending Office Action. Applicants reserve the right to offer and establish other grounds for reconsideration of this Office Action as may be appropriate.

In conclusion, Applicants have provisionally elected claims 1-42 and 48-49 of this application, with traverse, in response to the present restriction requirement. It is respectfully requested that Examiner Snow reconsider the present restriction requirement and withdraw it. An Office Action toward a Notice of Allowance in this case is respectfully solicited.

Respectfully submitted,



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